

1 literature, that PB's goal of exiting the 87T would in any
2 operational or technological way further the goal of divesti-
3 ture, and he gives an example. He goes on further on page 29
4 in lines 8, okay, to rely on PB's own planning documents that
5 compared various alternatives. And he goes on from there to
6 go to other determinations that, in his testimony, as he
7 exhibits, the DMS 200 in an access tandem environment was
8 untried and untested, and he documents that throughout his
9 testimony. And in his opinion as an expert who would be
10 responsible for network configurations based upon his review
11 of the documents, he's able to say that the corporate objec-
12 tive here, while otherwise generally certainly within Pac
13 Bell's discretion, was skewed because of the untried technol-
14 ogy and the lack of necessity to comply with the MFJ require-
15 ments to exit the 87T. He also has in here cost comparisons
16 and indications that Pac Bell had options that they were aware
17 of, from their own documents again, that they could have
18 chosen an access tandem installation at some other point in
19 time and provided for equal access through the 87T and at-
20 tained his other corporate objectives with access tandems at
21 different times without the results that occurred in this
22 LATA.

23 JUDGE MILLER: I'll sustain the objection.

24 MR. CHURCHILL: Page 30, line 20. It says, "If it
25 is assumed that the mandate of the MFJ imposed no particular

1 limits on PB's exercise of its business judgment..." through
2 page 31, line 7. Object to that on the basis of it's..there's
3 no foundation, Your Honor. It's argumentative and this, this
4 witness is not qualified to render that opinion.

5 MR. HELEIN: Once again, Your Honor, he demon-
6 strates, and we also demonstrate in a document that was only
7 released within the last month or so, that not only is there
8 foundation for these assertions based upon the fact that in no
9 other LATA in California was a access tandem, T-- DMS 200
10 switch by Northern Telecomm ever so deployed, meaning from his
11 own expert engineering analysis that this was an untried
12 technology for this particular application, but that indeed
13 something like five years later Northern Telecomm itself comes
14 up with a synchronization effect which only further under-
15 scores, and we did not discover this until a month ago when we
16 got the documents, that there was an inherent defect in this
17 particular technology. So, it's on all those factors that he
18 is basing this, and that is the foundation for his opinion.

19 JUDGE MILLER: I'll -- starting on page 30, line 20,
20 I will sustain the objection over through 7, line 7 of 31.

21 MR. CHURCHILL: Page 32, line 9. "The only ration-
22 al-- rationale identified by the record is PB's intent and
23 purpose to integrate into an overlay onto its equal access
24 obligation PB's own corporate objective as part of its design
25 and attempted implementation of equal access network, network

1 enhancements." Object to that as calling for speculation as
2 to PB's intent.

3 MR. HELEIN: His review --

4 MR. CHURCHILL: And relevance, Your Honor.

5 MR. HELEIN: His review of the, of the documents as
6 an expert in terms of local exchange engineering under the
7 obligations imposed by the modified final judgment is the
8 reason and basis for his ability to make that statement.

9 JUDGE MILLER: Objection sustained.

10 MR. CHURCHILL: Page 32, line 15, where it begins,
11 "In short I will make clear later in this testimony it is
12 evident from planning documents and ultimately the practice of
13 PB that PB's choice of an access tandem approach to provision
14 of the equal access was laden from the outset with its own
15 corporate missions."

16 MR. HELEIN: That's straight out of the documents,
17 Your Honor.

18 JUDGE MILLER: Straight out of what documents?

19 MR. HELEIN: It's straight out of the -- what I've
20 identified as the Fundamental Plan 6, I believe, and what is
21 called a CALTNP, the -- I can't remember the abbreviation.
22 It's tandem network -- but, anyway, it was a document that was
23 earlier -- it's now abbreviated to CALTNP, probably 25, and
24 it's also identified by Ms. Suzanne -- 24 it is, excuse me --
25 identified by Suzanne Galaway. There's an admission that

1 there was a dual role for the access tandem. It was not just
2 to provide equal access but was to provide all these things
3 enumerated on lines 19 through 23 of page 32 of TMC Exhibit 6.
4 And he goes into that in some detail. So, he's really reading
5 from -- it's a Corporate Access and LATA Tandem Network Plan
6 to -- TMC Exhibit 24, in which it's laid out that they went
7 from direct trunking under the old regime of AT&T's feature
8 group C access to the access plan in order to install these
9 additional corporate missions of Pac Bell. So, it's from
10 their own document, Your Honor. So, it's -- and also from
11 Suzanne Galaway, which we will elicit testimony. I base that
12 on her deposition testimony, which he so stated.

13 JUDGE MILLER: Overru-- the objection is overruled.

14 MR. CHURCHILL: In that regard, Your Honor, page 33,
15 beginning at line 8, where it says, "On March 11, 1983, it's
16 unbundled, in other words, direct trunking strategy for equal
17 access by approving the Corporate Access and LATA Tandem
18 Network Plan..." through line 14. Objected as -- on the
19 grounds of relevance, Your Honor.

20 MR. HELEIN: Relevancy, Your Honor, is, is that,
21 again, from their own documents, it's pointed out there that
22 this is called a Corporate Access and LATA Tandem Network
23 Plan. No mention being made of equal access whatsoever.
24 Moreover, we have only 12 of 31 pages of this particular
25 exhibit from which to, to make conclusions. And it's clear,

1 | though, in this expert's opinion, that rather than the direct
2 | trunking unbundled plan for equal access, which was part of
3 | the policy previously, this Corporate Access and LATA Tandem
4 | Network Plan changed that.

5 | And the March 11th date is again a directing order
6 | of -- I believe it was a president of Pac Bell, which changed
7 | from the unbundled direct trunking aspect of providing equal
8 | access to the tandem plan, and that's why the March 11th date
9 | is in there. And the directing order is an exhibit to our --
10 | I think it's -- yes, TMC Exhibit 27.

11 | MR. CHURCHILL: I understand the plan is in there,
12 | Your Honor, but my objection is to the relevance of this
13 | decision that was made on March 11th of 1983.

14 | JUDGE MILLER: 1983. I understand what you're
15 | saying. I will sustain the objection. Remote in time.

16 | MR. CHURCHILL: Moving on to page 38, line 23. "In
17 | any event, NTI's authorization of PB to access NTI's propri-
18 | etary information in order to 'fully understand' the system
19 | design was a unique action by a..."

20 | JUDGE MILLER: I'm sorry. You're going to have to
21 | come back and give me the page number again.

22 | MR. CHURCHILL: Sure, Your Honor. Page 38.

23 | JUDGE MILLER: 38. I'm sorry. I'm -- okay.

24 | MR. CHURCHILL: Line 23.

25 | JUDGE MILLER: Okay.

1 MR. CHURCHILL: It says, "In any event, NTI's autho-
2 rization of PB to access NTI's proprietary information in
3 order to 'fully understand' the system design was a unique
4 action by a vendor."

5 MR. HELEIN: Mr. Ritchey is testifying based upon
6 his knowledge and, and 33 years he was with AT&T in his con-
7 sulting capacity that normally vendors of high technology
8 switches such as this was do not share proprietary information
9 with the people they sell it to. But that was in fact done
10 here, from the documents that are disclosed, and he is
11 concluding in his opinion that that was a unique action by a
12 vendor in his experience. And he further goes on to explain
13 in the next several lines why that also is his opinion.

14 JUDGE MILLER: Objection sustained.

15 MR. CHURCHILL: Page 39, line 6. "Further isolating
16 and correcting troubles is not normally a BOK (phonetic sp.)
17 responsibility, which meant that PB did not possess the re-
18 sources to accomplish this task." That, that calls for specu-
19 lation as to what PB's resources are and, and also there's no
20 foundation that he knows what the normal BOK responsibilities
21 are.

22 MR. HELEIN: Well, he explains that, that there is
23 a, in fact, document in evidence that NTI establishes emergen-
24 cy switching assistance center which did not exist other than
25 with respect to the installation of its tandem. He's also

1 | saying that in his three decades of practice he never encoun-
2 | tered the procedure that Pac Bell and NTI agreed to, and that
3 | is the, the basis of his statement; plus his knowledge, subse-
4 | quent to divestiture, his involvement as a consultant with
5 | respect to the reconfiguration of these, of these networks.

6 | JUDGE MILLER: The objection is sustained. The
7 | sentence starting with "Further" and ending with "task" is, is
8 | stricken, and also the following word -- next word, "Hence,".
9 | From that point on, "NTI established an emergency switching
10 | assistance center..." seems to be -- it's a fact that can be
11 | established one way or the other and it's perfectly
12 | legitimate.

13 | MR. CHURCHILL: And, also, following that at line 9,
14 | Your Honor, there's a quotation in there and I object to that
15 | quotation as no foundation as to what the source of that is.

16 | JUDGE MILLER: Are you talking about the emergency
17 | switching assistance center?

18 | MR. CHURCHILL: Yes.

19 | MR. HELEIN: I believe that, Your Honor, is from TIA
20 | 84.

21 | JUDGE MILLER: I'm sorry.

22 | MR. HELEIN: I believe that's the Technical Informa-
23 | tion Agreement of February 24, '84, TIA 84, TMC Exhibit 32.

24 | JUDGE MILLER: TMC Exhibit 32?

25 | MR. HELEIN: Yes.

1 JUDGE MILLER: All right. I'll accept your repre-
2 sentation and overrule the objections.

3 MR. CHURCHILL: Page 39, line 29, where it begins,
4 "PB's gamble, aided and abetted by its vendor, NTI, entailed
5 far greater risk than other alternatives available to B-- to
6 PB." I object to that characterization and, and there's no
7 foundation that -- of any aiding and abetting in this case.

8 MR. HELEIN: Well, Your Honor, I don't mind changing
9 some words there. I mean, it's a matter that if he wants to
10 put -- aided and abetted, the vendor was assisting based on
11 the documents, the technical agreement which we just cited.
12 The fact that there were other alternatives which in the
13 expert's opinion were both less costly as well as less risky,
14 and that what Pac Bell was undertaking here was, again, an
15 untried technology.

16 JUDGE MILLER: Put a period after "switches".
17 Sustain the objection that you -- on line 29. And I'll sus-
18 tain the objection to the words "PB's gamble" till the end of
19 the first two words on line 2 of page 40.

20 MR. CHURCHILL: Page 40, beginning at line 4, where
21 it reads, "Another alternative, however, which PB obviously
22 ignored, was to use a proven 180 SS..." and it continues
23 through line 8, "the very same product lines that PB had to
24 embrace in its -- in retrospect." That sentence, Your Honor,
25 object to as, as being no foundation; calls for speculation as

1 to what Pacific Bell's state of mind was when it made its
2 decision.

3 MR. HELEIN: It's clear, Your Honor, from the record
4 that the switches, and from Mr. Ritchey's testimony that
5 follows starting in the following paragraph about the ESS line
6 of switches, of their proven superiority in, in trunking
7 capacity, which was three, four times that of the access
8 tandem, DMS 200, that was installed, and the fact that when
9 they determined to relieve the access tandem from its over-
10 capacity they in fact chose a 4ESS AT&T switch to do so, not
11 another DMS 200. That's all documented in, in this record.
12 His testimony that he believes PB obviously ignored this is
13 simply a conclusion of an expert reached from the facts that
14 I've just recited.

15 JUDGE MILLER: Objection sustained.

16 MR. CHURCHILL: Page 40, line 19. "Had this alter-
17 native been chosen, the effectuation of equal access in LATA 6
18 would in my opinion have produced far more effective compli-
19 ance with PB's equal access obligations and aborted this --
20 the disruption of TMC's traffic that occurred." There's no
21 foundation for that opinion.

22 MR. HELEIN: The foundation is established by the
23 following paragraph, comparing the size of the trunk capacity
24 of the 4ESS switches; for the fact that it installed the 4ESS
25 switch as, as a 91T; the fact that the 91T installation was so

1 immediate, and, and the following testimony --

2 JUDGE MILLER: Objection's overruled.

3 MR. CHURCHILL: I also object to that sentence on
4 the grounds that it calls for a legal conclusion as to what is
5 compliance with, with PB's equal access obligation.

6 JUDGE MILLER: Overruled. The word was "far more
7 effective compliance."

8 MR. CHURCHILL: Page 42, line 12, "Abandonment of
9 PB's corporate objective to configure additional DMS 200
10 switches as access/enhanced service tandems in other PB LATAs
11 undid NTI's marketing and sales of its DMS products."
12 There's, there's no foundation that this witness has personal
13 knowledge of that.

14 MR. HELEIN: That is based upon Mr. Ritchey's read-
15 ing of the discount and offering under the actual NTI/Pac Bell
16 contract for the purchase of these switches, which we have
17 concluded --

18 JUDGE MILLER: That's in the other -- that's in the
19 record, isn't it?

20 MR. HELEIN: The contract? I believe it is --

21 JUDGE MILLER: Yeah.

22 MR. HELEIN: -- yes. So, portions of it, because
23 the contract would be like four volumes of highly technical
24 exhibits and, and what have you. But it is -- portions of it
25 have been cited, yes.

1 JUDGE MILLER: I'll overrule the objection. And we
2 will take a 10-minute recess.

3 MR. CHURCHILL: Thank you, Your Honor.

4 MR. HELEIN: Thank you, Your Honor.

5 (Whereupon, a short recess ensued.)

6 MR. CHURCHILL: We're ready for page 45, Your Honor.
7 Starting at line 6, "These documents suggest to me that PB had
8 deliberated and then decided to intentionally advance its
9 corporate access goals as an overlay to its equal access
10 obligations. Underlying that decision was PB's intent to
11 layer 70 percent of its cost for achieving its corporate
12 access goals onto competitive IECs by rolling those costs onto
13 its overall conversion from a direct trunking environment to
14 an access tandem environment, all in the name of providing
15 equal access." It's, it's -- there's no foundation as to that
16 statement and it's speculative.

17 JUDGE MILLER: What do you mean no foundation?
18 What, what's, what's "these documents" mean? Although you
19 might not agree with, with, with, with him once you read those
20 documents, but the-- it seems that there are the documents for
21 the foundation, isn't -- aren't there, Mr. Churchill?

22 MR. CHURCHILL: There are documents, that's correct,
23 Your Honor.

24 JUDGE MILLER: And --

25 MR. CHURCHILL: Perhaps --

1 JUDGE MILLER: -- and the fact that they suggest
2 something to him that might not -- they might not suggest to
3 you or Mr. Wyatt or myself, is really not what we're here to
4 decide. He's entitled, he's entitled -- unless you think this
5 is some sort of a conclusion that he isn't qualified to give,
6 but -- I might not agree with it, but I overrule the
7 objection.

8 MR. CHURCHILL: Thank you, Your Honor.

9 JUDGE MILLER: Incidentally, Mr. Helein --

10 MR. HELEIN: Yes, sir?

11 JUDGE MILLER: -- when you get around someday to
12 talk to Mr. Ritchey, do you -- Ritchey, you should tell him,
13 you know, if you phrase your opinions like that, you're,
14 you're probably going to get more of them in evidence.

15 MR. HELEIN: I understand.

16 JUDGE MILLER: Because the, the, the word "docu-
17 ments" is there. I mean, there's something that a person can
18 cross-examine him on.

19 MR. HELEIN: Yes, Your Honor.

20 MR. CHURCHILL: Page 51, line 18, "PB's FP6 contem-
21 plated and intentionally in-- and intentionally included
22 access for PB's own intra-LATA traffic. By including its own
23 intra-LATA traffic in its access planning, PB intentionally
24 inflated the cost of equal access or, to put it another way,
25 increased the cost that IECs would pay for their equal

1 access." There's no foundation for that statement and this
2 witness is not qualified to render that opinion.

3 MR. HELEIN: The passage we just went over on page
4 45, the Fundamental Plan 6, the discussion prior to this in
5 terms of the cost and allocations and the fact that 55 percent
6 of the traffic on the access tandem was intra-LATA traffic are
7 the -- part of the underpinnings of that statement.

8 MS. WOOLF: If I can jump in, I don't think there's,
9 there's anything in any of those documents that talks about
10 the cost of equal access or what we charged customers.

11 MR. HELEIN: No, but in the doc--

12 JUDGE MILLER: Well, the point, I think -- the
13 point, I think, is, is -- let me ask you this. Is there a
14 document that I can look at to find out what the cost of PB's
15 own inter-LATA traffic was and why, then, on figures to com-
16 pare it with to show that by including that in it would there-
17 by inflate it? If I don't have that, then -- I don't have
18 that document, then I'm going to sustain the objection to
19 this, this --

20 MR. HELEIN: The --

21 JUDGE MILLER: -- paragraph.

22 MR. HELEIN: -- the document, Your Honor, is, is the
23 Corporate Access LATA Tandem Network Plan. The quotation on
24 page 45 of the 70 and 30 percent figures and the fact that it
25 is our contention, which we intend to document further through

1 testimony of the people we subpoenaed, that the entire costs
2 of the access tandem was going to be recovered by Pacific Bell
3 through charges for equal access. And in that scenario, by
4 layering in the intra-LATA traffic portions through that
5 access tandem but charging all the costs for that tandem to
6 the IECs, we were, we were subsidizing the intra-LATA traffic
7 that that tandem was used for.

8 MS. WOOLF: But therefore this, this witness has no
9 foundation for this statement right now.

10 MR. HELEIN: Well, it's, it's a matter that -- of
11 the page 45 --

12 JUDGE MILLER: The objection is sustained.

13 MR. HELEIN: Thank you, Your Honor.

14 MR. CHURCHILL: Page 53, line 12. Line 12 of page
15 53, it, it says, "Based on my observations of PB employees
16 doing depositions in 1990, I concluded that they possessed a
17 lot more knowledge of 90T performance problems than that to
18 which they were willing to stipulate." It calls for specula-
19 tion as to what the knowledge of --

20 MR. HELEIN: We'll --

21 MR. CHURCHILL: -- PB's --

22 MR. HELEIN: We'll agree to do that on cross-
23 examination.

24 JUDGE MILLER: And I, and I get a chance to look at
25 them and make such a conclusion if it's warranted. And if

1 not, I won't make it. All right. That's -- objection is
2 sustained there.

3 MR. CHURCHILL: Page 56, line 11. "TMC had only one
4 route, the access tandem, and, as, as traffic engineering
5 principles dictate, that one route was subject to preemption
6 by AT&T's and other direct-trunked IECs overflow traffic."
7 There's no foundation that he has personal knowledge of that.

8 MR. HELEIN: That statement is based on reading the
9 literature from Mr. P. J. Burk, cited at page 54, and the
10 Commission's own decision, also cited at page 54, TMC Exhibit
11 6, and it is a fundamental traffic engineering principle.
12 Moreover, TMC has been -- repeatedly shown that it only had
13 first-routed traffic through the access tandem for equal
14 access purposes.

15 JUDGE MILLER: I'll sustain the objection.

16 MR. CHURCHILL: Page 57, line 14. "However, of PB's
17 executive decisions to foster PB's corporate goals as alleged
18 above, this did not occur nor was it, in my opinion, even
19 considered. I conclude that direct trunk access service for
20 TMC was not even considered by PB for TMC, given the failure
21 and subsequent refusals of PB ever to inform TMC about its
22 1985 routing policy for LATA 6." It calls for speculation as
23 to what PB executives considered.

24 MR. HELEIN: Given the background that we've testi-
25 fied to and the fact that we've identified the routing policy

1 and the exceptions thereto and the fact that none of those
2 were in the tariff were ever communicated to TMC, it's this
3 expert's conclusion as stated in, in this testimony.

4 JUDGE MILLER: I'll sustain the objection, with,
5 with the understanding that if you prove these basic facts
6 out, namely that by cross-examining Bell -- or Pac Bell wit-
7 nesses, that they never had -- that they did not consider
8 direct trunking so -- available for TMC. There's somebody --
9 but -- it would be nice if you could get somebody besides
10 Wheatley. That I will -- you will, of course, will make that
11 conclusion to me in, in your Findings and Conclusions, and I
12 would expect you to.

13 MR. HELEIN: Yes, sir.

14 JUDGE MILLER: Okay.

15 MR. CHURCHILL: Page 58. Beginning at line 10,
16 where it says, "the impact on PB's plan to have the IECs amor-
17 tize PB's costs for its own corporate usage via the tandem.
18 In short..." down through line 16, where it ends at "direct
19 trunking."

20 JUDGE MILLER: My problem, you know, and you do this
21 maybe once in awhile, Mr. Churchill, you start me off in the
22 middle of a sentence and I get lost. You know, if, if it's,
23 if it's -- if there's a por-- prior portion of the sentence
24 that you don't object to, you know, that you've got to tell me
25 so and give me a period and, and -- so, so that, for the

1 record's sake, we'll be able to know where we're -- what we're
2 relying on. And, now, you started me off --

3 MR. CHURCHILL: Let's start off, Your Honor, at line
4 7 there, where it says "Logical reasons".

5 JUDGE MILLER: Okay. "Logical reasons".

6 MR. CHURCHILL: "Logical reasons for PB marketing to
7 disallow any diversions from access tandem routing to direct
8 trunking would be because of the impact on PB's plan to have
9 the IECs amortize PB's costs." Beginning there, down to line
10 16 where it ends, "...TMC to obtain direct trunking."

11 JUDGE MILLER: All right.

12 MR. HELEIN: The -- if I may, Your Honor?

13 MR. CHURCHILL: Object to that on, on the basis that
14 there's, there's no foundation that he has any personal know-
15 ledge of what, what he's talking about there.

16 MR. HELEIN: If I may, Your Honor, the -- what he's
17 doing is drawing a -- excuse me -- a logical expert opinion
18 based upon TMC Exhibit 16, in which document it was identified
19 that the routing policy which favored direct trunking was to,
20 to be made subordinate to homing the access tandem. And what
21 he's saying is is that for an engineering change of that
22 nature to be made, all right, logical consequence, he's put-
23 ting two and two together, that if in fact you did not have
24 these people home on a tandem and go through it, they wouldn't
25 be there using it and it wouldn't be charged to cost

1 | therefore, and that's why he is making his opinion the way he
2 | is.

3 | MS. WOOLF: The op-- the opinion, Your Honor, cen-
4 | ters on, on what we were going to do with the costs.

5 | JUDGE MILLER: I know how -- does amortizing PB's
6 | costs -- I will, I will sustain the objection.

7 | MR. CHURCHILL: Beginning --

8 | JUDGE MILLER: Wait a minute. Just a second. Got
9 | to know what to give -- all right. Proceed.

10 | MR. CHURCHILL: And at the end of that paragraph,
11 | Your Honor, at line 16 it says, "At the same time, this bar-
12 | rier absolutely precluded PB's personnel from dealing with TMC
13 | and certainly from assisting TMC to understand and obtain
14 | direct trunking." The same objection for that last sentence,
15 | Your Honor. There's no foundation that, that he has personal
16 | knowledge as to whether or not PB's personnel were absolutely
17 | precluded --

18 | JUDGE MILLER: I'm, I'm -- oh, I -- we -- on the
19 | statement, the next paragraph, "At the same --"

20 | MR. CHURCHILL: Yes. The --

21 | JUDGE MILLER: " -- time this barrier absolutely
22 | precluded..."?

23 | MR. CHURCHILL: Yes.

24 | JUDGE MILLER: Mr. Helein?

25 | MR. HELEIN: Your Honor, it's just the same thing,

1 based upon Exhibit 16, which identifies the necessity to home
2 on the access tandem. And the notes of Mr. Wheatley and, and
3 the declaration as late as 1988 of Helga Post that only the
4 large carriers were to get direct trunking, and the fact that
5 this other September '85 routing policy said you could have
6 direct trunking if you just asked for it, all those things
7 taken together lead to the conclusion that since he was -- TMC
8 was never offered direct trunking and was never given direct
9 trunking except in '88, that the conclusion reached is is that
10 that '86 policy of homing on the tandem dictated to the, if
11 you will, the direct marketing personnel and other people
12 involved with TMC that they would not provide direct trunking
13 to them.

14 JUDGE MILLER: That objection is sustained.

15 MR. CHURCHILL: Page 68, Your Honor.

16 JUDGE MILLER: 68?

17 MR. CHURCHILL: Yes.

18 JUDGE MILLER: I don't doubt, Mr. Helein, that if it
19 develops that Wheatley and Duer were in fact loath to either
20 suggest direct trunking to Mr. Bader or, or if they went so
21 far as to discourage it when reasonable people would, would
22 interpret Mr. Bader's language to be a request for it, and
23 forgetting whether or not the request should have been put in
24 writing, but, but that, that there was -- there probably was a
25 reason behind that, that's -- I, I -- and it may well be --

1 this may well turn out to be the reason. I don't know. But
2 I, I, I'll have to wait and see how the record develops on
3 that.

4 MR. HELEIN: Yes, Your Honor.

5 JUDGE MILLER: 68, Mr. Ritchey --

6 (Laughter.)

7 JUDGE MILLER: Churchill.

8 MR. CHURCHILL: That's Churchill, Your Honor

9 JUDGE MILLER: Mr. Churchill?

10 MR. CHURCHILL: Thank you, Your Honor. Page 68,
11 line 19. "The significance of this 1988 date is, of course,
12 that it demonstrates that the 90T had continued to have seri-
13 ous call-processing problems three years after its instal-
14 lation, as it does even to this day." I'm objecting to the,
15 the last line there where it says "as it does even to this
16 day." There's no foundation that there's any problems that
17 are existing to this day.

18 MR. HELEIN: The --

19 MR. CHURCHILL: That is not relevant.

20 MR. HELEIN: Well, if -- it's, it's relevant to the
21 extent that it indicates that this switch could never be
22 upgraded or fixed to its original specification and that the
23 switch indeed, from the day of installation, was unable to
24 handle the assignments that Pacific Bell gave to it or intend-
25 ed to give to it. The summation or the opinion that this

1 occurs today is the fact that the last evidence given in 1991,
2 I believe, was that the switch had to be maintained at a
3 capacity limitation of something less than 65 percent for
4 safety purposes, which is a direct statement by Suzanne
5 Galaway in her deposition. Mr. Ritchey had this information
6 available to him. We have no evidence that anything has been
7 done nor is able to be done to this switch to improve and
8 eliminate the problems it had, and so therefore the conclusion
9 is is that it is in the same situation, the same shape as it
10 was when it was first installed.

11 JUDGE MILLER: I'll put a period after the word
12 "installation" and -- just so that we can move on, and I'll
13 sustain it to "as it does even to this day." I don't know
14 whether it -- even if I find it to be so, I don't know how
15 much forward that moves your case, Mr. Helein. Proceed.

16 MR. CHURCHILL: Thank you, Your Honor. Page 73.

17 JUDGE MILLER: Wait a minute. Just a second here.
18 Let me just first look back here. All right. Proceed.

19 MR. CHURCHILL: Page 73, Your Honor. I'm objecting.
20 There's three opinions that are rendered here by Mr. Ritchey,
21 beginning at pa-- at page 73, line 11, through page 20 --
22 through line 29.

23 JUDGE MILLER: I see --

24 MR. CHURCHILL: Actually there's four opinions, and
25 I'm objecting to those opinions on the basis that no founda-

1 | tion and he's not qualified to render those opinions.

2 | JUDGE MILLER: Well, you will -- I will overrule
3 | that objection and we will go into Mr., Mr. Ritchey's qualifi-
4 | cations to render those, those opinions as all of the other
5 | ones we've listed.

6 | MR. CHURCHILL: I have no further objections, Your
7 | Honor.

8 | JUDGE MILLER: TMC Exhibit 6 is received subject to
9 | the rulings I have made.

10 | (Whereupon, the document marked
11 | for identification as TMC
12 | Exhibit No. 6 was received into
13 | evidence subject to the Judge's
14 | rulings made hereto.)

15 | JUDGE MILLER: Mr. Waysdorf?

16 | MR. WAYSDORF: Yes, Your Honor. Thank you. The
17 | next exhibit we would like i-- marked for identification is
18 | TMC Exhibit 7. It's a two-page exhibit entitled testimony of
19 | Mark S. Bachman, President and Owner of Bigger Than Life, Inc.

20 | JUDGE MILLER: All right. The document you just
21 | described will be marked for identification as TMC Exhibit 7.

22 | (Whereupon, the document
23 | referred to as TMC Exhibit No. 7
24 | was marked for identification.)

25 | MR. WAYSDORF: And I'd like to move its acceptance

1 into evidence.

2 JUDGE MILLER: Who's on, who's on first?

3 MR. CHURCHILL: I am, Your Honor.

4 JUDGE MILLER: All right. Mr. Churchill?

5 MR. CHURCHILL: Thank you.

6 JUDGE MILLER: I, I'm, I'm -- going to write that --
7 well, I won't, won't call you a witness anymore, Mr.
8 Churchill.

9 MR. CHURCHILL: Your Honor, I'd like to make an
10 objection as to beginning at paragraph two of the witness's
11 statement where he indicates that he's a president and owner
12 of Bigger Than Life, and then he indicates that, at line 6,
13 that Bigger Than Life cancelled service with TMC because of
14 poor quality and long-distance service. And my objection to
15 that, it, it's on the -- because he does not indicate the date
16 that he cancelled service. I object to that cancellation on
17 the bal-- basis of relevance. He doesn't indicate that he
18 cancelled during the relevant time period here.

19 JUDGE MILLER: That may, that may well be, but I'm
20 going to overrule your objection. I note that myself. And I
21 want, I want -- not only do I want to know when he initiated
22 service, I want to know when he terminated service. And if
23 there's a way to verify that by looking at some documents that
24 you may have in your possession, I want it verified. And I'm
25 referring to some documents that accompanied the Complaint.

1 But this, this is one of the items that goes right to the
2 heart of this case and I'm not going to, I'm not going to rule
3 it out. I think it needs some fleshing out to find out how,
4 how, how relevant it is.

5 And I'll tell you something, if it turns out that
6 it's -- that he cancelled before -- two years before February
7 of '87, you know, at least you will, will -- you will have
8 established your -- what do you call that argument? You know,
9 statute of limitations. Yes, statute of limitations. But
10 until we get all the facts, I, I, I, I accept this in evi-
11 dence. Anything further?

12 MR. CHURCHILL: The only other objection I had, Your
13 Honor, was, was at -- in paragraph four I had a hearsay objec-
14 tion as to he's relating apparent entries on the trouble log
15 that were made by somebody by the name of Dick Dixon. And
16 he's not Dick Dixon. I've got a hearsay objection on that and
17 no foundation that, that Mr. Dixon actually made those com-
18 plaints, and there's no attachment here of any documentation
19 supporting that.

20 JUDGE MILLER: The, the word that bothers me with
21 that sentence is the word "understand". I, I get the feeling
22 that he didn't even see the log himself but is accepting
23 somebody else's word of what that log says.

24 And, in addition, I, I have problems in saying he
25 doesn't recall the exact date of cancellation. Does he have

1 any records? Of his own. I mean, not necessarily TMC's, of
2 his own, when the -- when this could begin.

3 But, again, I am not going to -- I'm going to over-
4 rule any objection to that material and I'll just let you know
5 that I have, I have -- I share your concerns, share your
6 concerns about the data that's, that's being given to me.

7 MR. CHURCHILL: Thank you, Your Honor.

8 MR. WAYSORF: Your Honor, next --

9 JUDGE MILLER: Proceed. Wait a minute.

10 MR. WAYSORF: I'm sorry.

11 MR. CHURCHILL: I have no further objection to --

12 JUDGE MILLER: Okay.

13 MR. CHURCHILL: --

14 JUDGE MILLER: Well, then, now it's my turn before
15 you -- Mr. Waysdorf. TMC Exhibit 7 is received subject to the
16 rulings I have made.

17 (Whereupon, the document marked
18 for identification as TMC
19 Exhibit No. 7 was received into
20 evidence subject to the Judge's
21 rulings made hereto.)

22 JUDGE MILLER: All right.

23 MR. WAYSORF: Your Honor, with respect to TMC
24 Exhibit 8, we have not received back the original -- the
25 declaration that accompanies this exhibit. We have been